

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENBY JR., et al., :
 :
Plaintiffs, :
vs. : Case No. 01-CV-769
 : (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
 :
Defendants. :

Deposition of ROBERT B. HEILAND JR.,
defendant herein, called by the plaintiffs for
cross-examination, pursuant to the Federal Rules of
Civil Procedure, taken before me, Wendy Davies
Welsh, a Registered Diplomate Reporter and Notary
Public in and for the State of Ohio, at the offices
of Helmer, Martins & Morgan Co. LPA, 1900 Fourth &
Walnut Centre, 105 East Fourth Street, Cincinnati,
Ohio, on Wednesday, December 3, 2003, at 10:10 AM.

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. 4 Don Stiens, Esq. 5 Frederick M. Morgan Jr., Esq. 6 Helmer, Martins & Morgan Co. LPA 7 Suite 1900, Fourth & Walnut Centre 8 105 East Fourth Street 9 Cincinnati, Ohio 45202 10 Phone: (513) 421-2400</p> <p>11 John J. Helbling, Esq. 12 The Helbling Law Firm, L.L.C. 13 3672 Springdale Road 14 Cincinnati, Ohio 45251 15 Phone: (513) 923-9740</p> <p>16 On behalf of the Defendants City of Golf Manor, 17 Stephen Tilley, Roby Heiland and Chris 18 Campbell:</p> <p>19 Wilson G. Weisenfelder, Jr., Esq. 20 Rendigs, Fry, Kiely & Dennis 21 900 Fourth & Vine Tower 22 One West Fourth Street 23 Cincinnati, Ohio 45202-3688 24 Phone: (513) 381-9200</p> <p>25 On behalf of the Defendant City of Golf Manor:</p> <p>26 Terrence M. Donnellon, Esq. 27 Donnellon, Donnellon & Miller 28 9079 Montgomery Road 29 Cincinnati, Ohio 45242 30 Phone: (513) 891-7087</p>	<p>1 S T I P U L A T I O N S</p> <p>2 It is stipulated by and among counsel for the</p> <p>3 respective parties that the deposition of ROBERT B.</p> <p>4 HEILAND JR., defendant herein, called by the</p> <p>5 plaintiffs for cross-examination, pursuant to the</p> <p>6 Federal Rules of Civil Procedure, may be taken at</p> <p>7 this time by the notary; that said deposition may be</p> <p>8 reduced to writing in stenotype by the notary, whose</p> <p>9 notes may then be transcribed out of the presence of</p> <p>10 the witness; and that proof of the official</p> <p>11 character and qualifications of the notary is</p> <p>12 expressly waived.</p> <p>13 - - -</p>
<p>1 On behalf of Defendants City of Cincinnati, 2 Darren Sellers, Jason Hodge:</p> <p>3 Geri Hernandez Geller, Esq. 4 Assistant City Solicitor 5 Department of Law 6 Room 214, City Hall 7 801 Plum Street 8 Cincinnati, Ohio 45202 9 Phone: (513) 352-3346</p> <p>10 On behalf of the Defendants Robert B. Jorg, 11 Patrick Caton, Jason Hodge, Victor Spellman and 12 Darren Sellers:</p> <p>13 Donald E. Hardin, Esq. 14 Hardin, Lefton, Lazarus & Marks, LLC 15 915 Cincinnati Club Building 16 30 Garfield Place 17 Cincinnati, Ohio 45202 18 Phone: (513) 721-7300</p> <p>19 Also present:</p> <p>20 Chief Stephen Tilley</p> <p>21 Lisa Damstrom, Law Clerk</p> <p>22 Helmer, Martins & Morgan Co., L.P.A.</p>	<p>1 I N D E X</p> <p>2 Examination by: Page</p> <p>3 Mr. Martins 6</p> <p>4 Mr. Hardin 104</p> <p>5 Mr. Martins 132</p> <p>6 Mr. Hardin 139</p> <p>7 - - -</p> <p>8 E X H I B I T S</p> <p>9 Page</p> <p>10</p> <p>11 Plaintiff's Exhibits 69 & 70 12</p> <p>12 Plaintiff's Exhibit 71 29</p> <p>13 Plaintiff's Exhibit 72 50</p> <p>14 Plaintiff's Exhibit 73 51</p> <p>15 Plaintiff's Exhibit 74 56</p> <p>16 Plaintiff's Exhibit 75 66</p> <p>17 Plaintiff's Exhibit 76 68</p> <p>18 Plaintiff's Exhibit 77 75</p> <p>19 Plaintiff's Exhibit 77A 77</p> <p>20 Plaintiff's Exhibit 78 92</p> <p>21 Plaintiff's Exhibits 79 & 80 137</p> <p>22 - - -</p>

<p style="text-align: right;">Page 14</p> <p>1 a guide for some other employment history. If you 2 go to the second page, midway through we have the 3 Hamilton County juvenile court officer, and then 4 from, am I correct in reading this, from '94 through 5 '97 you worked at Good Samaritan Hospital as a 6 health tech? 7 A. That's correct. 8 Q. What are the duties of a health tech, 9 technician? 10 MR. WEISENFELDER: Then or now? 11 Q. At this time. What were your duties as a 12 health technician? 13 A. At that time, the best way to explain it, 14 I think, is the hospital did away with nursing 15 assistants and LPNs and they kind of combined the 16 two jobs. So my duties would be to assist the 17 nurse, an RN: Vital signs, bed pans, just basically 18 being a nursing assistant. 19 Q. Did you have to have any particular 20 qualifications in order to be a health technician? 21 A. Good Samaritan Hospital trains you. I 22 think it was a six to eight week program that they 23 trained you in-house. 24 Q. Before that, from '93 to '94, if I'm</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Yes. It was a unit out of St. Louis. 2 Q. Without going into any detail, what kind 3 of training did you receive as a combat medic? 4 A. Basic first aid for combat type injuries: 5 Give shots, IVs, assessments. 6 Q. Would that include CPR? 7 A. Yes. 8 Q. Do these two documents, 69 and 70, fairly 9 reflect your employment history? 10 A. Yes. 11 Q. Are EMTs licensed? Is there a 12 qualification process that they go through? 13 A. Yes. 14 Q. Certification? 15 A. At the time they had a national 16 certification and a state certification. Some 17 states would adopt, if you were nationally 18 registered, they would adopt you. 19 Q. I gather that when you worked for 20 Eldercare you were a certified EMT? 21 A. Yes. 22 Q. When you worked for Good Sam were you a 23 certified EMT? 24 A. I'm not sure if my certification -- how</p>
<p style="text-align: right;">Page 15</p> <p>1 reading this correctly, you worked for Eldercare as 2 an EMT; is that right? 3 A. That's correct. 4 Q. Prior to that, from '91 to '93, College of 5 Mt. St. Joe, retail coordinator? 6 A. Yes. 7 Q. What is a retail coordinator? 8 A. Basically, worked in shipping/receiving in 9 the college bookstore. 10 Q. If you turn the page again, on the third 11 page there is a question concerning military 12 service. And I see that you at some point in time 13 were a combat medic in the United States Army 14 Reserve. Can you explain to me when you were a 15 combat medic? 16 A. Yes. I attended Basic Training '91, '92. 17 After that went to Fort Sam Houston for combat medic 18 training. Subsequently was transferred to the 19 Inactive Reserve for the remaining of my service. 20 Q. Fort Sam Houston is a major medical center 21 in the Army, isn't it? 22 A. Yes. 23 Q. Then in the Inactive Reserve were you 24 assigned to a unit?</p>	<p style="text-align: right;">Page 17</p> <p>1 long it carried on. 2 Q. In 2000 were you a certified EMT? 3 A. No. 4 Q. But you had the EMT experience and the 5 knowledge? 6 A. Yes. 7 Q. Had you been asked, do you feel that you 8 would have been qualified to provide CPR to Mr. 9 Owensby on the night of November 7, 2000? 10 MR. WEISENFELDER: Objection. 11 Go ahead. Go ahead. 12 THE WITNESS: I'm sorry? 13 MR. MARTINS: Counsel will make objections 14 from time to time, but unless he instructs you 15 not to answer, you still have to answer the 16 question. 17 THE WITNESS: Okay. 18 MR. MARTINS: So he just made an objection 19 and he told you to go ahead and answer. 20 A. Okay. What was the question? I was 21 confused. 22 Q. Had you been asked, do you feel that you 23 would have been qualified to provide CPR to Mr. 24 Owensby on the night of November 7, 2000?</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 18</p> <p>1 MR. WEISENFELDER: Objection. 2 Go ahead. 3 A. Was I qualified to perform CPR? Did I 4 feel I was qualified? Yes, had I been asked. 5 Q. Have you ever provided, I'm going to use 6 the term CPR, but I'm looking at in my mind 7 resuscitation of somebody who has drowned? 8 A. Somebody that has drowned? 9 Q. Yes. You often hear of kids falling in a 10 pool or people -- 11 A. Have I actually done CPR -- 12 Q. Performed CPR. 13 A. -- on somebody that's drowned? No. 14 Q. Have you performed CPR on somebody who was 15 unconscious? 16 A. Yes. 17 Q. Were you successful in resuscitating the 18 individual? 19 A. No. 20 Q. Had there been occasions where you were 21 successful? 22 A. No. That was the only one time. 23 Q. Oh, it was only once? 24 A. (Nodding head.)</p>	<p style="text-align: right;">Page 20</p> <p>1 based on your past experience; is that right? 2 A. That's right. 3 Q. I take it from what I've seen in this case 4 you did not perform any CPR or any medical -- 5 provide any medical assistance to Mr. Owensby; is 6 that right? 7 MR. WEISENFELDER: Objection. 8 Go ahead. 9 A. That's right. 10 Q. I want to take you back now to November 7, 11 2000, to that evening. As I understand it, you were 12 at the Golf Manor police station and received a 13 notification of an officer needs assistance call; is 14 that right? 15 A. That's right. 16 Q. Starting from that point would you walk me 17 through what happened. 18 A. At that point I got into my cruiser. I 19 was actually in the police station when the call 20 came out. I knew it was close, so I went to my 21 cruiser, turned the lights and sirens on, and 22 responded to the scene. 23 Pulled onto the parking lot, the Sunoco 24 parking lot, parked my car, got out of my car, went</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. I take it as an officer for the Village of 2 Golf Manor there is some medical first aid type 3 training that you also undergo? 4 A. I have not. 5 Q. Has the Village of Golf Manor required 6 that, or do you know whether or not the Village of 7 Golf Manor requires that officers have any CPR 8 training? 9 MR. WEISENFELDER: Just to keep everything 10 straight, you're talking about 2000 or now? 11 MR. MARTINS: Now. 12 MR. WEISENFELDER: Three years later? 13 MR. MARTINS: Yes. I'm talking now. 14 MR. WEISENFELDER: Okay. 15 A. I am not. 16 Q. You're not aware? 17 A. I'm not aware. 18 Q. Now I'm going to go back. As of 19 November 7, 2000, do you know whether or not the 20 Village of Golf Manor required that its officers 21 have CPR training? 22 A. I do not know. 23 Q. Nevertheless, on the night of November 7, 24 2000 you feel that you were qualified to perform CPR</p>	<p style="text-align: right;">Page 21</p> <p>1 around the front of the cruiser. And by the time I 2 got to the front corner, the passenger's side, I saw 3 a Huntington Meadows security guy waiving me down 4 like everything was okay, slow down. 5 Q. That's what you understood it to mean? 6 A. That's what I understood it to mean. 7 Q. Okay. 8 A. So I stopped at the front of my cruiser 9 and I saw some distance away the rear passenger's 10 side of a car, two police officers, and who I now 11 know to be Roger Owensby laying on the ground. 12 Q. Okay. Go ahead. 13 A. Did I answer your question? 14 Q. No. When you said two police officers, 15 and then you said Owensby, I thought obviously he 16 was not one of the police officers. Okay. 17 A. He appeared to be handcuffed, to me. And 18 there was one on each side of him. 19 Q. Can you clarify that for a second? He 20 appeared to be handcuffed? When you say "to me," 21 you mean it appeared to you that he was handcuffed? 22 A. It appeared to me -- 23 Q. That he was handcuffed? 24 A. -- that he was handcuff.</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 22</p> <p>1 Q. All right.</p> <p>2 A. And there was a police officer on each</p> <p>3 side of him, there was a few people around. And one</p> <p>4 of the officers asked if they could put him in my</p> <p>5 cruiser.</p> <p>6 Q. When that question was asked where was Mr.</p> <p>7 Owensby?</p> <p>8 A. Mr. Owensby was still on the ground or</p> <p>9 they were in the process of picking him up.</p> <p>10 Q. Picking him up? Okay. Go ahead.</p> <p>11 A. I said, "Sure." They picked him up, one</p> <p>12 on each side, under each arm, and brought him to my</p> <p>13 cruiser. I opened the rear passenger door and they</p> <p>14 placed Mr. Owensby in the back of my car.</p> <p>15 Q. Let me show you what's previously been</p> <p>16 marked as Exhibit 9. Do you recall whether or not</p> <p>17 that is a photograph of the car that the officers</p> <p>18 and Mr. Owensby were near when you pulled in?</p> <p>19 A. I don't recall what type of car it was. I</p> <p>20 can't see the background in the picture.</p> <p>21 Q. As perspective goes, this is taken from</p> <p>22 the entrance of the convenience store looking out.</p> <p>23 A. Having said that, then they would have</p> <p>24 been at the rear of this car.</p>	<p style="text-align: right;">Page 24</p> <p>1 Officer Campbell with you?</p> <p>2 A. I don't recall.</p> <p>3 Q. When you returned to the cruiser were the</p> <p>4 doors, the back doors, closed?</p> <p>5 A. Yes, they were.</p> <p>6 Q. Did you check on Mr. Owensby?</p> <p>7 MR. WEISENFELDER: Objection.</p> <p>8 Go ahead.</p> <p>9 A. No.</p> <p>10 Q. No?</p> <p>11 A. No.</p> <p>12 Q. Did you ever look in to check on Mr.</p> <p>13 Owensby?</p> <p>14 MR. WEISENFELDER: Objection.</p> <p>15 Go ahead.</p> <p>16 A. Yes.</p> <p>17 Q. When?</p> <p>18 A. I don't know how long it was, but I did</p> <p>19 look in the back of the cruiser.</p> <p>20 Q. When you did look in -- let me back up.</p> <p>21 The cruiser was situated near a gas</p> <p>22 island, correct?</p> <p>23 A. Correct.</p> <p>24 Q. The gas island has those halogen lights on</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Did you watch them place Mr. Owensby in</p> <p>2 the back seat of the car, of the Golf Manor car?</p> <p>3 A. I opened the door, took a step away, and</p> <p>4 they were having trouble placing him in the back of</p> <p>5 the car. No. I didn't watch them place him all the</p> <p>6 way in the car.</p> <p>7 Q. What did you do as they were placing him?</p> <p>8 Where was your attention directed as they were</p> <p>9 placing him in the car?</p> <p>10 A. Looking out the rest of the parking lot.</p> <p>11 At one point I walked away and went over to another</p> <p>12 Golf Manor officer, Officer Campbell.</p> <p>13 Q. Was there a point in time where you</p> <p>14 returned to your cruiser?</p> <p>15 A. Yes.</p> <p>16 Q. So you walk away toward Officer Campbell,</p> <p>17 and then some time goes by and you and Officer</p> <p>18 Campbell, or at least you, return to your cruiser,</p> <p>19 right?</p> <p>20 A. Correct.</p> <p>21 Q. Do you have an estimate of how much time</p> <p>22 went by in that interval?</p> <p>23 A. I don't recall.</p> <p>24 Q. When you returned to your cruiser was</p>	<p style="text-align: right;">Page 25</p> <p>1 it, correct?</p> <p>2 A. I don't recall.</p> <p>3 Q. In any event, there was sufficient light</p> <p>4 from the gas island and from the convenience store</p> <p>5 to see Mr. Owensby in the back seat of the car,</p> <p>6 right?</p> <p>7 A. The scene was well lit.</p> <p>8 Q. When you did look in, what did you see?</p> <p>9 A. Mr. Owensby was handcuffed and laying in</p> <p>10 the back of the cruiser.</p> <p>11 Q. How was he situated in the back seat?</p> <p>12 Sitting up, laying down?</p> <p>13 A. He was laying down.</p> <p>14 Q. Where was his head?</p> <p>15 A. His head was facing the passenger's side</p> <p>16 of the car.</p> <p>17 Q. When you looked in were you on the</p> <p>18 passenger's side of the car?</p> <p>19 A. Correction. His head was facing the</p> <p>20 driver's side of the car. When I looked in I was on</p> <p>21 the passenger's side.</p> <p>22 Q. So you were looking in through the</p> <p>23 passenger's side rear window?</p> <p>24 A. Correct.</p>

Page 22 - Page 25

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 26</p> <p>1 Q. The windows I take it were rolled up?</p> <p>2 A. Yes.</p> <p>3 Q. So when you looked in, the part of Mr.</p> <p>4 Owensby's body closest to you on the passenger's</p> <p>5 side would have been his feet and legs?</p> <p>6 A. That's correct.</p> <p>7 Q. Were they on the seat?</p> <p>8 A. I don't recall.</p> <p>9 Q. Now, was he laying on his side, on his</p> <p>10 stomach, on his back? How was he positioned on the</p> <p>11 seat?</p> <p>12 A. He was on his side.</p> <p>13 Q. Do you know which side?</p> <p>14 A. I believe it was his right side.</p> <p>15 Q. Was his face then facing the trunk?</p> <p>16 A. I don't recall.</p> <p>17 Q. Let me show you what's previously been</p> <p>18 marked as Exhibit 67. I believe that is a</p> <p>19 photograph of the back seat of your Golf Manor</p> <p>20 cruiser?</p> <p>21 MR. HARDIN: I'm sorry, what was the</p> <p>22 number?</p> <p>23 MR. MARTINS: 67.</p> <p>24 Q. Can you tell whether or not that's taken</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Why did you look in?</p> <p>2 A. I don't know.</p> <p>3 Q. While you were standing outside the car</p> <p>4 near the passenger rear door did you talk with any</p> <p>5 other officers?</p> <p>6 A. Yes.</p> <p>7 Q. Who did you talk to?</p> <p>8 A. I spoke with Officer Brazile.</p> <p>9 Q. He's a Cincinnati police officer?</p> <p>10 A. He's a Cincinnati police officer, that's</p> <p>11 correct.</p> <p>12 Q. You know him from the academy?</p> <p>13 A. I do.</p> <p>14 Q. Did you talk with anyone else?</p> <p>15 A. Officer Campbell. I don't know if I spoke</p> <p>16 with anybody else at that time.</p> <p>17 Q. What did you and Officer Campbell talk</p> <p>18 about?</p> <p>19 A. I don't recall.</p> <p>20 Q. What did you and Officer Brazile talk</p> <p>21 about?</p> <p>22 A. I hadn't seen him in a while. We went to</p> <p>23 the academy together at Scarlet Oaks, and I asked</p> <p>24 him how he was doing. He said, "Good." And we</p>
<p style="text-align: right;">Page 27</p> <p>1 from the driver's side or the passenger's side?</p> <p>2 A. I can't tell.</p> <p>3 Q. Do you recall if he was laying on his</p> <p>4 right side, and his head would have been behind the</p> <p>5 driver's seat, correct?</p> <p>6 A. His head was behind the driver's seat.</p> <p>7 Q. So then he would have been facing the</p> <p>8 trunk of the car?</p> <p>9 MR. WEISENFELDER: Objection.</p> <p>10 Go ahead.</p> <p>11 A. What's the question?</p> <p>12 Q. If he's laying on the back seat of the car</p> <p>13 and his head is behind the driver's seat, he's</p> <p>14 laying on his right shoulder, on his right side,</p> <p>15 wouldn't his face be facing the trunk?</p> <p>16 A. I don't recall how his face was.</p> <p>17 Q. When you looked in at him did you notice</p> <p>18 any movement?</p> <p>19 A. No.</p> <p>20 Q. Did you hear any sounds?</p> <p>21 A. No.</p> <p>22 Q. Did you do anything in response to looking</p> <p>23 in on Mr. Owensby?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 29</p> <p>1 shook hands.</p> <p>2 Q. Did Officer Brazile look in the car?</p> <p>3 A. Yes.</p> <p>4 Q. Do you recall whether or not he used a</p> <p>5 flashlight?</p> <p>6 A. I don't recall if he did or not.</p> <p>7 Q. Did he say anything to you after he looked</p> <p>8 in the car?</p> <p>9 A. He did say something.</p> <p>10 Q. Do you recall what he said?</p> <p>11 A. I don't recall exactly what he said.</p> <p>12 (Plaintiff's Exhibit 71 was marked for identi-</p> <p>13 fication.)</p> <p>14 Q. I'll direct you, but this is an excerpt</p> <p>15 from Officer Brazile's deposition. It's marked as</p> <p>16 Exhibit 71.</p> <p>17 MR. WEISENFELDER: Do you want him to read</p> <p>18 the whole thing?</p> <p>19 MR. MARTINS: No.</p> <p>20 Q. I'll direct you. Specifically, I want to</p> <p>21 direct your attention to page 54.</p> <p>22 Beginning at line 3, you see the question</p> <p>23 is posed: "Did you say anything to Officer Heiland</p> <p>24 at that time, after seeing Mr. Owensby with your</p>

Page 26 - Page 29

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 30</p> <p>1 flashlight?"</p> <p>2 And Officer Brazile says, "Yes."</p> <p>3 The question is: "What did you say to</p> <p>4 Officer Heiland?"</p> <p>5 "Answer: I walked around to the other</p> <p>6 side of the vehicle.</p> <p>7 "Question: To the -- to the --</p> <p>8 "Answer: To where they were.</p> <p>9 "Question: -- rear of the passenger's</p> <p>10 side of the vehicle?</p> <p>11 "Answer: Where they were standing.</p> <p>12 "Question: Okay.</p> <p>13 "And I asked him, I said, 'The guy you</p> <p>14 have in your car, is he okay?' I said, 'Can he</p> <p>15 breathe?' I said, 'He's in a' -- you know, position</p> <p>16 that looked like he was in, it may have been hard,</p> <p>17 so I asked him. I'm figuring he's their prisoner.</p> <p>18 No one ever said whose he was. I figured he was</p> <p>19 theirs, because he was in their car.</p> <p>20 "And basically I was just trying to let</p> <p>21 them know to check on him, just to see what's going</p> <p>22 on with him or did they know or had they checked. I</p> <p>23 don't know. I just had arrived.</p> <p>24 "And basically when I told them, you know,</p>	<p style="text-align: right;">Page 32</p> <p>1 Do you recall shrugging your shoulders in</p> <p>2 response to something that Officer Brazile said?</p> <p>3 A. I do not recall.</p> <p>4 Q. Do you recall whether or not Officer</p> <p>5 Brazile looked in the car before or after you looked</p> <p>6 in the car to see Mr. Owensby?</p> <p>7 A. I do not know.</p> <p>8 Q. What's the next thing you remember as far</p> <p>9 as standing at the back of the car? You had a</p> <p>10 conversation with Officer Brazile, what's the next</p> <p>11 thing that happens?</p> <p>12 A. The next thing that happens, I believe, is</p> <p>13 a sergeant, Cincinnati sergeant --</p> <p>14 Q. Male?</p> <p>15 A. Male sergeant. I don't recall his name.</p> <p>16 Q. Sergeant Watts?</p> <p>17 A. Sergeant Watts. I think some of my</p> <p>18 statements I say Sergeant Browner. I think there</p> <p>19 was two sergeants there.</p> <p>20 Q. There were.</p> <p>21 A. Sergeant Watts, the male sergeant, asked</p> <p>22 me -- he wanted to speak to the prisoner. So I went</p> <p>23 over to the side of the car to roll down the window</p> <p>24 for him. He subsequently opened it. I rolled the</p>
<p style="text-align: right;">Page 31</p> <p>1 they basically just stood there and kind of like</p> <p>2 shrugged their shoulders.</p> <p>3 "Question: Both of them?</p> <p>4 "Answer: From what I recall."</p> <p>5 Does that refresh your recollection as to</p> <p>6 what was said?</p> <p>7 A. No. I don't -- I don't recall what he</p> <p>8 said. I know we had a conversation and I --</p> <p>9 Q. So you don't know if what he's saying here</p> <p>10 is accurate or inaccurate?</p> <p>11 A. I do not.</p> <p>12 Q. If you look at page 56, beginning with</p> <p>13 line 14 the question is: "As I recall, your</p> <p>14 statement was something along the lines of: This</p> <p>15 looks fucked up, can he breathe, it don't look like</p> <p>16 he can from the way he's laying."</p> <p>17 Answer is: "Uh-huh."</p> <p>18 "Question: Is that accurate to your</p> <p>19 recollection?</p> <p>20 "Answer: Yes.</p> <p>21 "And you saying, in response to that,</p> <p>22 Officer Heiland and possibly the other officer</p> <p>23 simply shrugged their shoulders?"</p> <p>24 "Answer: Yes."</p>	<p style="text-align: right;">Page 33</p> <p>1 window down. He opened the door and tried to speak</p> <p>2 to Mr. Owensby.</p> <p>3 Q. When you rolled down the window you did</p> <p>4 this from the driver's door?</p> <p>5 A. That's correct.</p> <p>6 Q. These are automatic windows?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Where was Sergeant Watts in relation to</p> <p>9 your cruiser? Was he on the driver's side? Was he</p> <p>10 on the passenger's side?</p> <p>11 A. He was on the driver's side by the rear</p> <p>12 door.</p> <p>13 Q. Do you recall if anybody was with Sergeant</p> <p>14 Watts?</p> <p>15 A. I don't know.</p> <p>16 Q. So you rolled down the window for him, and</p> <p>17 what does he do?</p> <p>18 A. He says something to the effect of, Hey,</p> <p>19 buddy, can I talk to you? Hey. He tries to arouse</p> <p>20 Mr. Owensby.</p> <p>21 Q. Did you hear any response from Mr.</p> <p>22 Owensby?</p> <p>23 A. No.</p> <p>24 Q. Did you see Mr. Owensby move?</p>

Page 30 - Page 33

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 34</p> <p>1 A. No.</p> <p>2 Q. Were you looking in the car at the time?</p> <p>3 A. I don't believe so.</p> <p>4 Q. You hear no response from Mr. Owensby.</p> <p>5 What's the next thing that happens?</p> <p>6 A. The sergeant starts to give some orders to</p> <p>7 the other officers.</p> <p>8 Q. This is after he's opened the door?</p> <p>9 A. Correction. Let me back up.</p> <p>10 Sergeant gets on his radio, calls for</p> <p>11 medical, and he starts giving directions to the</p> <p>12 officers to get Mr. Owensby out of the car.</p> <p>13 Q. Does all of this occur after the sergeant</p> <p>14 has opened the back door, the driver's side back</p> <p>15 door?</p> <p>16 A. Yes.</p> <p>17 Q. When the sergeant opened the driver's side</p> <p>18 back door did he reach in and touch Mr. Owensby?</p> <p>19 A. I don't know.</p> <p>20 Q. What happens after that?</p> <p>21 A. Sergeant Watts is giving directions to the</p> <p>22 officers to get him out. I walked over to the other</p> <p>23 side and stood off to the side with Officer</p> <p>24 Campbell.</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Are you asking for my opinion?</p> <p>2 Q. Well, based on your experience as an EMT</p> <p>3 and as a medic.</p> <p>4 A. It could.</p> <p>5 Q. Were you there when the, I guess, fire</p> <p>6 rescue, Cincinnati Fire Rescue, arrived?</p> <p>7 A. I was still there.</p> <p>8 Q. Did you observe what those people, the</p> <p>9 fire rescue, did?</p> <p>10 A. I don't recall.</p> <p>11 Q. Do you recall hearing anyone from the fire</p> <p>12 rescue when they arrived telling the officers to</p> <p>13 remove the handcuffs from Mr. Owensby?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you assist in any way in performing</p> <p>16 CPR or providing any medical aid for Mr. Owensby</p> <p>17 once he was taken out of the car?</p> <p>18 A. No, sir.</p> <p>19 Q. Did Officer Campbell?</p> <p>20 A. No, sir, I don't believe so. He went to</p> <p>21 get a mask, if that's assisting.</p> <p>22 Q. Explain to me what a mask is.</p> <p>23 A. A CPR mask, basically just a round</p> <p>24 plastic, sometimes plastic, mask. The ones we have</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. So you walked over to the passenger's</p> <p>2 side, rear passenger's side, of your cruiser?</p> <p>3 A. To that side. I wasn't standing by that</p> <p>4 immediate area. We were off to the side.</p> <p>5 Q. What did you see and hear at that time?</p> <p>6 A. At that time City of Cincinnati officers</p> <p>7 were performing CPR.</p> <p>8 Q. Was Mr. Owensby still handcuffed?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know, based on your training as a</p> <p>11 medic and as an EMT, whether or not CPR can be</p> <p>12 properly performed if a person's hands are</p> <p>13 handcuffed behind their back?</p> <p>14 A. I don't know if it can or not.</p> <p>15 Q. From your training, isn't it true that the</p> <p>16 person should be laying flat on the ground when</p> <p>17 you're doing the chest compression?</p> <p>18 A. I would think that they should be flat on</p> <p>19 the ground.</p> <p>20 Q. Having the arms handcuffed behind the back</p> <p>21 would hinder laying the person flat on the ground,</p> <p>22 wouldn't it?</p> <p>23 MR. HARDIN: Objection.</p> <p>24 MR. WEISENFELDER: Go ahead.</p>	<p style="text-align: right;">Page 37</p> <p>1 are plastic, with a tube that comes out. Basically</p> <p>2 creates a good vacuum, so to speak, so you can blow</p> <p>3 in. And if any vomit or anything else comes out, it</p> <p>4 will not contaminate the person performing CPR.</p> <p>5 Q. Based on your experience, it's not</p> <p>6 uncommon when performing CPR for vomit or other</p> <p>7 materials from either the lungs or in the throat to</p> <p>8 come out?</p> <p>9 MR. WEISENFELDER: Objection.</p> <p>10 Go ahead.</p> <p>11 A. I don't think I have enough experience in</p> <p>12 actually performing it to say.</p> <p>13 Q. Okay. Did you observe any vomit or other</p> <p>14 material come out of Mr. Owensby's mouth while the</p> <p>15 CPR was being performed?</p> <p>16 A. No.</p> <p>17 Q. Were you able to tell one way or the other</p> <p>18 if anything was coming out of his mouth?</p> <p>19 A. No.</p> <p>20 Q. You weren't close enough?</p> <p>21 A. Correct.</p> <p>22 Q. All right. What's the next thing that</p> <p>23 happened? Fire rescue arrives, they're performing</p> <p>24 CPR. What else happens?</p>

Page 34 - Page 37

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 42</p> <p>1 Q. Do you know whether or not any lawyers 2 showed up on the scene? 3 A. I don't know. The news was across the 4 street. 5 Q. The what? 6 A. The news. 7 Q. What is the news? 8 A. The news. The media. 9 Q. Oh. Okay. 10 A. Yeah. 11 MR. WEISENFELDER: Wait until there's a 12 question. 13 THE WITNESS: Sorry. 14 Q. Am I correct in understanding that when 15 you initially pulled into the Sunoco station you saw 16 two Cincinnati Police Department uniformed officers 17 kneeling down over Mr. Owensby? 18 A. Correct. 19 Q. Were they kneeling on him or next to him? 20 A. From where I was standing I couldn't be 21 exact -- I couldn't say with certainty where their 22 knees were. It appeared that they were just next to 23 him, crouched down. 24 Q. As you got out of your car and circled</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. As they were coming toward you bringing 2 Mr. Owensby, were you facing them? 3 A. Yes. 4 Q. So you were also facing Mr. Owensby, 5 right? 6 A. Yes. 7 Q. Could you see his face? 8 A. Yes. 9 Q. What did his face look like? 10 A. It appeared that he had a little bit of 11 blood on his face, and I don't recall that there was 12 any facial expression or anything like that. 13 Q. Did he have any blood on his forehead? 14 A. I don't recall. 15 Q. Were his eyes opened or closed? 16 A. I don't know. 17 Q. Was his head erect or down or back? 18 A. It was down a little bit. 19 Q. Did you hear him say anything as they were 20 bringing him toward your cruiser? 21 A. No. 22 Q. Did you see him move in any fashion as 23 they were bringing him towards your cruiser? 24 A. No.</p>
<p style="text-align: right;">Page 43</p> <p>1 around to the right of the -- to the front of the 2 car and the Huntington Meadows security officer 3 waved you down, at this point in time the officers 4 were picking up Mr. Owensby off of the ground; is 5 that right? 6 A. Correct. 7 Q. When he was picked up off the ground you 8 believe he was handcuffed; is that right? 9 A. I believe he was. 10 Q. That's because of the position of his 11 arms? 12 A. Correct. 13 Q. The officers that picked him up, were 14 those officers Jorg and Caton? 15 A. Yes. 16 Q. It was those two officers who escorted Mr. 17 Owensby towards your car? 18 A. Correct. 19 Q. Do you recall which officer asked you for 20 permission to place Mr. Owensby in your car? 21 A. I do not know. 22 Q. Do you know whether or not it was one of 23 those two, that is Caton or Jorg? 24 A. I do not know.</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. I mean, obviously he's moving, because 2 they're bringing him, but I mean, in terms of 3 actively resisting, trying to pull away from them or 4 kicking at them, anything like that? 5 A. I didn't see him kick. No major 6 movements. It appeared that they were struggling to 7 get him to the cruiser. 8 Q. As you sit here today, you don't recall 9 whether or not the struggling was because they were 10 carrying somebody who was unconscious or whether or 11 not it was resistance of some sort? 12 A. I do not know. 13 Q. Would you describe for me how they were 14 bringing him to the cruiser, that is their position 15 in relation to Mr. Owensby. 16 A. One officer on each side with their arm 17 through his (indicating). 18 Q. So his arms are handcuffed behind his 19 back? 20 A. Handcuffed. 21 Q. They are on each side? Who is on Mr. 22 Owensby's right as you're looking, your left? Do 23 you understand what I'm saying? 24 A. No.</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 46</p> <p>1 Q. Mr. Owensby is coming towards you.</p> <p>2 A. Okay.</p> <p>3 Q. Who is to Mr. Owensby's right? Who is</p> <p>4 holding his right arm?</p> <p>5 A. If I'm looking at them and they're coming</p> <p>6 towards me, Officer Jorg is on --</p> <p>7 Q. -- Owensby's left?</p> <p>8 A. Owensby's left. Officer Caton is on the</p> <p>9 right.</p> <p>10 Q. As I understand it, his arms are</p> <p>11 handcuffed behind his back and each officer has an</p> <p>12 arm through, I guess, near his elbow through the</p> <p>13 arm?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. Were the officers breathing heavily like</p> <p>16 someone who had just been in a struggle?</p> <p>17 A. They appeared that they were breathing</p> <p>18 heavy, disheveled.</p> <p>19 Q. Right. Did you notice whether or not Mr.</p> <p>20 Owensby was breathing heavily?</p> <p>21 A. I did not.</p> <p>22 Q. Am I correct in understanding that you saw</p> <p>23 no movement and heard no sounds from Mr. Owensby as</p> <p>24 they brought him toward the car?</p>	<p style="text-align: right;">Page 48</p> <p>1 help --</p> <p>2 Q. Did you see him -- I'm sorry, I didn't</p> <p>3 mean to interrupt you. Go ahead.</p> <p>4 A. -- to help, I assumed to help get Mr.</p> <p>5 Owensby in the car.</p> <p>6 Q. Did you see what Officer Caton did when he</p> <p>7 went around to the driver's rear door?</p> <p>8 A. No.</p> <p>9 Q. Did you see him open the driver's rear</p> <p>10 door?</p> <p>11 A. No.</p> <p>12 Q. So when you turn your attention away from</p> <p>13 the car, Mr. Owensby was being placed in the car and</p> <p>14 Caton was going around to the driver's rear door?</p> <p>15 A. Correct.</p> <p>16 Q. When they placed Mr. Owensby in the car he</p> <p>17 was placed in head first, correct?</p> <p>18 A. Correct.</p> <p>19 Q. In your experience, when you place a</p> <p>20 prisoner in a car, in a police cruiser, who's</p> <p>21 handcuffed, assuming the prisoner is conscious,</p> <p>22 would they go in head first or would they place</p> <p>23 their feet in and then their butt and then the rest</p> <p>24 of their torso in?</p>
<p style="text-align: right;">Page 47</p> <p>1 A. That's correct.</p> <p>2 Q. Could you tell whether or not, as they</p> <p>3 approached you and your car, whether or not Mr.</p> <p>4 Owensby was unconscious?</p> <p>5 A. I couldn't tell.</p> <p>6 Q. I take it you did not check?</p> <p>7 MR. WEISENFELDER: Objection.</p> <p>8 Go ahead.</p> <p>9 A. I did not.</p> <p>10 Q. So am I correct in understanding that when</p> <p>11 Jorg and Caton placed Mr. Owensby in your car you</p> <p>12 did not know the condition of Mr. Owensby at that</p> <p>13 time?</p> <p>14 A. I did not know.</p> <p>15 Q. The physical condition of Mr. Owensby?</p> <p>16 A. I did not.</p> <p>17 Q. You did not know whether or not he was</p> <p>18 conscious or unconscious?</p> <p>19 A. I did not.</p> <p>20 Q. As I understand it, after you opened the</p> <p>21 door Officer Jorg and Caton put Owensby in the back</p> <p>22 seat and then Caton went around to the driver's side</p> <p>23 to pull Owensby into the back seat; is that right?</p> <p>24 A. He did go around to the other side to</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. HARDIN: Objection.</p> <p>2 MR. WEISENFELDER: You can answer.</p> <p>3 THE WITNESS: Objection, go ahead?</p> <p>4 A. Assuming that they're conscious, that's</p> <p>5 correct, feet first and set them in the cruiser.</p> <p>6 Q. In this case he was head first and torso</p> <p>7 in, and then you saw Caton go around to the other</p> <p>8 side of the car?</p> <p>9 A. Correct.</p> <p>10 Q. When Officer Caton walked around to the</p> <p>11 other side of the car were Mr. Owensby's legs still</p> <p>12 outside of the car?</p> <p>13 A. I don't know.</p> <p>14 Q. Did you hear any grunting or groaning from</p> <p>15 the officers as they were trying to put Mr. Owensby</p> <p>16 in the car?</p> <p>17 MR. WEISENFELDER: I'm going to object.</p> <p>18 Grunting or groaning from the officers or from</p> <p>19 Mr. Owensby?</p> <p>20 MR. MARTINS: From the officers. From</p> <p>21 either Jorg or Caton.</p> <p>22 Q. You can answer.</p> <p>23 MR. WEISENFELDER: You can answer.</p> <p>24 THE WITNESS: Okay.</p>

Page 46 - Page 49

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 66</p> <p>1 of this car being parked next to your car?</p> <p>2 A. No.</p> <p>3 Q. At this point in time do you know whether</p> <p>4 or not you had already had your conversation with</p> <p>5 Officer Brazile?</p> <p>6 A. I do not.</p> <p>7 Q. We're at 4 minutes 30 seconds. Do you</p> <p>8 know whether or not at this point in time you had</p> <p>9 checked on Mr. Owensby, that is looked in on him?</p> <p>10 A. I do not know.</p> <p>11 Q. 4 minutes, 33 seconds. There is a car in</p> <p>12 the middle of the screen. That would be Officer</p> <p>13 Campbell's Golf Manor cruiser?</p> <p>14 A. Correct.</p> <p>15 (Discussion off the record.)</p> <p>16 (Plaintiff's Exhibit 75 was marked for identi-</p> <p>17 fication.)</p> <p>18 Q. Let me show you, sir, Exhibit 75, which I</p> <p>19 believe is a transcript of your testimony during</p> <p>20 Officer Caton's trial. If you'd just take a look at</p> <p>21 that and tell me whether or not that seems to be the</p> <p>22 case.</p> <p>23 A. Yes, it does.</p> <p>24 Q. What's your best estimate of, from the</p>	<p style="text-align: right;">Page 68</p> <p>1 (Plaintiff's Exhibit 76 was marked for identi-</p> <p>2 fication.)</p> <p>3 Q. Let me show you what's marked as</p> <p>4 Exhibit 76. Exhibit 76 is the oath that you took in</p> <p>5 February 1, 2000 when you became a police officer</p> <p>6 for the Village of Golf Manor, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Before November 7, 2000 did you have any</p> <p>9 experience with an arrest being made by another</p> <p>10 police department and them placing their prisoner in</p> <p>11 a Golf Manor cruiser?</p> <p>12 A. I don't know.</p> <p>13 Q. Since November 7, 2000 have you had any</p> <p>14 experience with a police department, other than Golf</p> <p>15 Manor, making an arrest and placing the prisoner in</p> <p>16 a Golf Manor cruiser?</p> <p>17 MR. HARDIN: Objection.</p> <p>18 A. No.</p> <p>19 Q. Do you know if on November 7, 2000 there</p> <p>20 was a policy or some guidance in place that</p> <p>21 addressed the situation that arose that evening?</p> <p>22 MR. WEISENFELDER: I'm going to object as</p> <p>23 to the vague question in terms of situation.</p> <p>24 MR. MARTINS: Yes. Let me rephrase.</p>
<p style="text-align: right;">Page 67</p> <p>1 time you got the officer needs assistance call, how</p> <p>2 much time it took to get to the scene, to the</p> <p>3 convenience store parking lot?</p> <p>4 A. 30 seconds to a minute maybe.</p> <p>5 Q. Does the police station where you were</p> <p>6 located, does it have a life squad or an EMT unit</p> <p>7 there?</p> <p>8 A. Yes.</p> <p>9 Q. So for them to get to that same location</p> <p>10 would have taken approximately the same amount of</p> <p>11 time?</p> <p>12 A. I don't know how long it would have taken</p> <p>13 them.</p> <p>14 Q. Well, it took you between 30 seconds and a</p> <p>15 minute?</p> <p>16 A. Correct.</p> <p>17 Q. Is there any reason to believe that it</p> <p>18 would have taken them a longer amount of time?</p> <p>19 MR. WEISENFELDER: Objection.</p> <p>20 Go ahead.</p> <p>21 A. If they had to -- I don't know how life</p> <p>22 squad and fire departments work, if they have to get</p> <p>23 dressed and get down to the car and take off. I</p> <p>24 don't know the procedures.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Do you know whether or not Golf Manor had</p> <p>2 a policy or guidance for its officers on November 7,</p> <p>3 2000 to address the situation where a Golf Manor</p> <p>4 officer is asked to give permission to place a</p> <p>5 person who has been arrested by another police</p> <p>6 department in a Golf Manor cruiser?</p> <p>7 MR. WEISENFELDER: Objection.</p> <p>8 Go ahead, you can answer.</p> <p>9 A. I knew at that time, based on working,</p> <p>10 training, that we could go over to other departments</p> <p>11 and assist them with whatever they needed.</p> <p>12 Q. I don't mean to cut you off.</p> <p>13 A. That's okay.</p> <p>14 Q. That was this mutual aid agreement that</p> <p>15 was signed by the various police departments in the</p> <p>16 greater Cincinnati area?</p> <p>17 A. Correct.</p> <p>18 Q. Other than knowing that you could assist</p> <p>19 other police departments, do you know whether or not</p> <p>20 there was any policy or guidance or custom in place</p> <p>21 at Golf Manor to address what an officer's duties</p> <p>22 and responsibilities were where another police</p> <p>23 department asked him to place their prisoner in his</p> <p>24 car?</p>

Page 66 - Page 69

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 70</p> <p>1 A. When we would respond to a scene to assist 2 another department we would be under their command, 3 no matter what the rank. If you pull up on the 4 scene you assist them in how they need you to 5 assist. 6 Q. Did you have an understanding as to 7 whether or not you would, in this situation, 8 November 7, 2000, when you responded to the Sunoco 9 station, did you understand that you were assisting 10 the Cincinnati Police Department? 11 A. Yes. The assistance call came out. 12 That's why I was there. 13 Q. In responding to this assistance call, did 14 you understand that you would be subject to the 15 rules, policies, and customs of the Cincinnati 16 Police Department or the Golf Manor Police 17 Department? 18 A. My understanding was I would be there at 19 the scene to assist them how they needed me to. 20 Q. But what rules governed your conduct? Was 21 it Golf Manor or was it Cincinnati Police 22 Department? 23 MR. WEISENFELDER: Objection. 24 Go ahead.</p>	<p style="text-align: right;">Page 72</p> <p>1 rules and regulations; is that correct? 2 MR. WEISENFELDER: Objection as to form. 3 If you can answer that, go ahead. 4 A. I can't answer it. 5 Q. My question is just whether or not you had 6 any instruction on November 7th as to which 7 department's rules and regulations you were to 8 follow when you were assisting another police 9 department. 10 MR. WEISENFELDER: Objection. 11 Q. The question is just whether or not you 12 had any instruction. 13 A. No. 14 Q. As of November 7, 2000, did you have any 15 understanding as to whether you had any 16 responsibilities for the safety of a prisoner who 17 was placed in your cruiser? 18 MR. WEISENFELDER: I'm going to object 19 again as to the form. 20 Go ahead. 21 A. The question again, please? 22 Q. As of November 7, 2000, did you have any 23 understanding of your responsibilities for the 24 safety of a prisoner who is arrested by another</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. If you know. 2 A. I don't know. 3 Q. Do you recall receiving any instruction or 4 guidance concerning what rules a Golf Manor officer 5 had to follow when he was in this situation of 6 assisting another police department? 7 A. Through working with other officers in 8 field training and going to other scenes and other 9 departments, I just understood that we were under 10 their direction for as long as they needed 11 assistance and that was it. 12 Q. Did you have any understanding that you 13 would be bound -- or whether or not you would be 14 bound by the policies, rules, and regulations of the 15 Cincinnati Police Department if you were assisting 16 the Cincinnati Police Department? 17 A. I didn't know. 18 Q. You didn't know? 19 A. I didn't -- at that time I don't -- I 20 don't know. 21 Q. And as I take it at that time you had 22 received no instruction on whether or not you were 23 bound by, say in this case, Cincinnati's rules and 24 regulations or continued to be bound by Golf Manor's</p>	<p style="text-align: right;">Page 73</p> <p>1 police force but placed in your cruiser? 2 MR. WEISENFELDER: Objection. 3 Go ahead. 4 A. My understanding at that time is I would 5 be responsible for my prisoners, anybody that was in 6 my custody. If somebody is not my prisoner, not in 7 my custody, then on the assistance call if somebody 8 puts their prisoner in the back of my car, they 9 asked to put them in the back of my car and I'm 10 there for assistance. It's their prisoner and it's 11 in their custody. So it's their responsibility. 12 Q. Did you have any understanding that by 13 accepting the prisoner and placing him in the back 14 seat of the Golf Manor cruiser that the prisoner was 15 now in your custody? 16 MR. WEISENFELDER: Objection as to the 17 word "accepting." 18 Go ahead and answer. 19 A. No. 20 Q. Did you receive any training as to the 21 distinction we've just been talking about, that 22 whether or not a prisoner placed in a Golf Manor car 23 from another jurisdiction, as to who had custody of 24 the prisoner?</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 74</p> <p>1 A. From going to other calls and seeing it 2 done before, the prisoner's always the arresting 3 officer's or the agency's jurisdiction where you're 4 at. 5 Q. You had had this arise in the past? 6 A. I have seen it done on other calls. 7 Q. Before November 7, 2000? 8 A. I don't recall exact dates, but, yeah. 9 Q. But before the night of November 7, 2000; 10 is that right? 11 A. Yes. 12 Q. Did you feel that you had any 13 responsibility for the well-being of Mr. Owensby? 14 A. No. 15 MR. WEISENFELDER: Objection. 16 Go ahead. 17 Q. Regardless of who is technically 18 responsible for the well-being of a prisoner, if you 19 know that a prisoner is injured and needs medical 20 attention, is it your understanding that you have a 21 duty to provide medical attention? 22 A. Yes. 23 Q. You knew that this person, Mr. Owensby, 24 had blood around his nose and mouth; is that right?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. That's correct. 2 Q. That's one of the sections of the Golf 3 Manor manual that you reviewed in preparation for 4 your deposition today? 5 A. That's correct. 6 Q. Did you select out the sections to review 7 today or did someone else select them out for you? 8 The sections of the manual. 9 A. Did I select these today? 10 Q. No, no. When you were getting ready for 11 your deposition, for today's deposition, you 12 reviewed various sections of the Golf Manor manual. 13 My question is did you select out those provisions 14 to look at or did someone else select them out for 15 you? 16 MR. WEISENFELDER: I'm going to object. I 17 think your invading the attorney-client 18 privilege now, to the extent that the attorney 19 may have been present when he was preparing for 20 the deposition, and what he may have been 21 instructed to review by an attorney I believe 22 falls within that. 23 Q. The only question I want to know is 24 whether or not you selected the sections, either a</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Yes. 2 Q. Did you take any steps to administer any 3 first aid for the blood around the nose and mouth? 4 MR. WEISENFELDER: Objection. 5 Go ahead. 6 A. No. 7 Q. Had you done so, do you think you would 8 have been in a better position to determine whether 9 or not Mr. Owensby was conscious or unconscious at 10 the time he was placed in your vehicle? 11 MR. WEISENFELDER: Objection. 12 Go ahead. 13 A. I don't know. 14 Q. I know you said that you don't recall what 15 Officer Brazile told you, but do you recall whether 16 or not you took any action in response to what 17 Officer Brazile told you? 18 A. I don't recall. 19 (Plaintiff's Exhibit 77 20 was marked for identi- 21 fication.) 22 Q. Let me show you a portion of the Golf 23 Manor manual, marked as Exhibit 77. Exhibit 77 is 24 the Golf Manor manual provision 6-07 concerning prisoner transportation; is that right?</p>	<p style="text-align: right;">Page 77</p> <p>1 yes or no, not as to any communication with any 2 attorney. 3 MR. WEISENFELDER: You can answer. 4 A. No, I did not select the sections. 5 Q. In Exhibit 77, if you go to page 4 you 6 will see that it is blank. I have what I believe is 7 page 4 based on what counsel has provided. 8 MR. WEISENFELDER: Counsel will represent 9 that when responding to request for production 10 of documents approximately a year ago, that 11 apparently in copying what was believed to be a 12 responsive portion of the manual, page 4 13 apparently was blacked out, not intentionally. 14 (Plaintiff's Exhibit 15 77A was marked for 16 identi- fication.) 17 Q. So I'm going to mark page 4 with 18 Exhibit -- as 77A. I want to direct your attention 19 to section II. A of the manual, which is on the 20 first page of Exhibit 77. 21 The second sentence of II. A. says, 22 "Therefore, it is the policy of this department that 23 EVERY prisoner transported in a police vehicle shall 24 be searched and handcuffed by the transporting officer prior to being transported, unless</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 78</p> <p>1 specifically exempted under provisions of this 2 procedure." Do you see that? 3 A. I do. 4 Q. Do you see that the word "EVERY" is 5 capitalized? 6 A. Yes. 7 Q. Neither you nor Officer Campbell searched 8 Mr. Owensby on the night of November 7, 2000; is 9 that right? 10 A. That's correct. 11 Q. Had you searched Mr. Owensby do you 12 believe that you would have been in a better 13 position to discover whether or not at a minimum he 14 was conscious or unconscious at the time that he was 15 placed in the vehicle? 16 MR. WEISENFELDER: Objection. 17 Go ahead. 18 A. Yes. We didn't search him because we 19 weren't going to transport him. 20 Q. If you had determined that he was 21 unconscious, regardless of whether or not he was in 22 your custody, would you have administered first aid 23 to him? 24 A. Yes. Or let the city --</p>	<p style="text-align: right;">Page 80</p> <p>1 he be transported by another agency? 2 Q. No, no. My question is can you recall a 3 situation where Golf Manor made an arrest and there 4 was more than one Golf Manor car there at the scene. 5 Okay? 6 A. (Nodding head.) 7 Q. The prisoner, the Golf Manor prisoner, is 8 taken and placed in a Golf Manor car, but when it 9 comes time to transport the prisoner, for some 10 reason the prisoner is moved to another Golf Manor 11 car. Maybe the car that he was originally placed in 12 has another call to go to or something, so he's 13 taken out and moved to another car to be 14 transported. Do you recall any such situations? 15 A. I don't recall. 16 Q. Based on your training, if that happened, 17 would Golf Manor search, be under an obligation to 18 search the prisoner when he was being placed in the 19 first car? 20 MR. WEISENFELDER: Objection. Calls for 21 speculation. 22 Go ahead. You can answer. 23 A. I don't understand the question. 24 Q. A person is drunk and disorderly. Three</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Or called for -- 2 A. -- let the city officers, the arresting 3 officers, know. 4 Q. None of that was done, correct? 5 MR. WEISENFELDER: Objection. 6 Go ahead. 7 A. Correct. 8 Q. Am I correct in understanding that your 9 reason as to why none of that was done was because 10 you were not going to be transporting Mr. Owensby? 11 A. Correct. 12 Q. Have there been situations where Golf 13 Manor has responded to a scene, that more than one 14 Golf Manor car has responded to a scene, and a Golf 15 Manor prisoner was placed in one car and then when 16 it came time to transport the prisoner, the prisoner 17 was moved to another Golf Manor car? 18 MR. WEISENFELDER: Objection. 19 Go ahead. 20 A. I'm sure the situation has a -- 21 MR. WEISENFELDER: The question is do you 22 know of one? 23 A. If there's two police -- two Golf Manor 24 cruisers there and there's only one prisoner, would</p>	<p style="text-align: right;">Page 81</p> <p>1 Golf Manor cars arrive on the scene in response. 2 A. Okay. 3 Q. The person is arrested and is placed in 4 the first Golf Manor car. 5 A. Okay. 6 Q. In the back seat. He's handcuffed and 7 placed in the back seat. As it turns out, the 8 officer that's driving the first car receives a call 9 and has to go somewhere else. Okay? 10 A. (Nodding head.) 11 Q. So the person is taken out of the back 12 seat of the car and moved into the second Golf Manor 13 car for transport. Understood? 14 A. Uh-huh. 15 MR. WEISENFELDER: Yes? 16 A. Yes. 17 Q. In that situation, when the arrestee is 18 placed in the first Golf Manor car, is it your 19 understanding that per the Golf Manor manual that 20 arrestee has to be searched? 21 A. Before being placed in the first Golf 22 Manor car? 23 Q. Correct. 24 A. Yes.</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 82</p> <p>1 Q. Go to paragraph D on that same page, 2 bottom of the page. The second sentence says, 3 "Every prisoner shall be placed in the Police 4 vehicle and secured with seat belts." See that? 5 A. Yes. 6 Q. In this case Mr. Owensby was not secured 7 with seat belts, was he? 8 MR. WEISENFELDER: Objection. 9 Go ahead. 10 A. No. 11 Q. Had he been secured with a seat belt he 12 would have been sitting up, would he not? 13 A. Correct. 14 Q. Had you received any training from Golf 15 Manor concerning positional asphyxia? 16 A. At that time? 17 Q. At that time. 18 A. No. 19 Q. Since that time have you received any 20 training concerning positional asphyxia? 21 MR. WEISENFELDER: Objection. 22 Go ahead. 23 A. Since that time we've received a video. 24 There's a video, yes.</p>	<p style="text-align: right;">Page 84</p> <p>1 Manor or by Cincinnati? 2 MR. MARTINS: By Golf Manor. 3 A. Correct. 4 Q. To your knowledge, was it done by 5 Cincinnati? 6 A. I do not know. 7 Q. Am I correct in understanding that the 8 reason it was not done was because you were not 9 asked to transport? 10 MR. HARDIN: Objection. Are you saying it 11 wasn't done by Golf Manor? 12 MR. MARTINS: By Golf Manor. Sorry. 13 MR. WEISENFELDER: You can answer. 14 A. Correct. 15 Q. Have you been in situations in part of 16 this cooperation or assistance agreement where Golf 17 Manor was asked to transport a prisoner? 18 MR. WEISENFELDER: Okay. For point of 19 clarification since we're dealing, I believe, 20 with what you're referring to is the mutual aid 21 agreement. 22 MR. MARTINS: Mutual aid agreement. 23 MR. WEISENFELDER: Being asked to 24 transport a prisoner from whose jurisdiction by</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. On positional asphyxia? 2 A. Yes. 3 Q. What is your understanding of what 4 positional asphyxia is? 5 A. My understanding is if somebody is in a 6 position that it's hard for them to breathe is what 7 it comes down to. That's my understanding of it. 8 Somebody's in a position where it makes it hard for 9 them to breathe. 10 Q. Do you have any understanding as to why 11 Mr. Owensby was not seat belted in the Golf Manor 12 cruiser on the evening of November 7, 2000? 13 A. No. 14 Q. Take a look at section II. I., which is on 15 page 3. It says, "Prior to being transported to or 16 from a detention facility, the transporting officer 17 shall ensure that a positive identification of the 18 prisoner has been made, and that all required 19 paperwork has been completed and accompanies the 20 prisoner." See that? 21 A. Yes. 22 Q. I take it that was not done in this case, 23 correct? 24 MR. WEISENFELDER: Objection. By Golf</p>	<p style="text-align: right;">Page 85</p> <p>1 what agency? 2 Q. A prisoner of another agency, Golf Manor 3 is being asked to transport. 4 A. I don't recall if I personally have been 5 in that situation. 6 Q. Have you heard of that? 7 MR. WEISENFELDER: Objection. 8 Go ahead. 9 A. I have heard of it. 10 Q. In that situation what is your 11 understanding of whether or not the Golf Manor 12 officer has an obligation to ensure the positive 13 identification of the prisoner has been made? 14 A. If an officer is going to be transporting 15 somebody, they should, for example, if they're 16 transporting to the jail, they should make sure they 17 have the proper paperwork and that they have that 18 person. 19 Q. On November 7, 2000 you were simply asked 20 by the Cincinnati police officers if they could 21 place Mr. Owensby in the back seat of your cruiser, 22 correct? 23 A. Correct. 24 Q. You said yes?</p>

Page 82 - Page 85

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 86</p> <p>1 A. I said, "Sure." 2 Q. "Sure." Did anyone say to you words to 3 the effect, "We're going to transport him later"? 4 A. No. 5 Q. Go to page 6, please. Section II. E., 6 first paragraph says, "Any prisoner who is sick or 7 injured shall be examined by life squad personnel 8 and offered treatment for their injury or illness 9 prior to being transported to any jail or detention 10 facility." See that? 11 A. Yes, sir. 12 Q. On November 7, 2000 did you understand 13 that to be the policy and requirements of Golf 14 Manor? 15 A. Yes. 16 Q. Did you make any attempt to determine 17 whether or not Mr. Owensby was injured, other than 18 seeing the blood around his nose and mouth? 19 MR. WEISENFELDER: Objection. 20 Go ahead. 21 A. No. 22 Q. I take it you took no steps to ensure that 23 he was examined by life squad personnel, correct? 24 MR. WEISENFELDER: Objection.</p>	<p style="text-align: right;">Page 88</p> <p>1 was Maced? 2 A. I did not know. 3 Q. Did you smell Mace when you got there? 4 A. I did not. 5 Q. Did you see any police officers or other 6 individuals coughing or reacting to Mace? 7 A. Not that I recall. 8 Q. Have you used Mace? 9 A. Yes. 10 Q. Have you been Maced? 11 A. Yes. 12 Q. Based on your experience, what is the 13 reaction to Mace? 14 A. Based on my experience, it's rather 15 unpleasant. It causes you to sneeze or your mucus 16 membranes to excrete. 17 Q. Does it make breathing difficult? 18 A. To me personally, it didn't -- it wasn't 19 tough for me to breathe when I was Maced. I can't 20 speak for other people. I have heard that, but it 21 wasn't for me. 22 Q. Over the radio did you hear any report 23 that Mr. Owensby had been Maced? 24 A. No.</p>
<p style="text-align: right;">Page 87</p> <p>1 Go ahead. 2 A. Correct. 3 Q. The only life squad personnel involved 4 would have been when Sergeant Watts called for 5 medical assistance, correct? 6 MR. HARDIN: Object to the form of the 7 question. 8 MR. WEISENFELDER: Go ahead. 9 A. Correct. 10 Q. You never offered treatment for Mr. 11 Owensby's injuries on the night of November 7, 2000, 12 correct? 13 MR. WEISENFELDER: Objection. 14 Go ahead. 15 A. Correct. 16 Q. Had you attempted to ask him, ask Mr. 17 Owensby, whether or not he wanted treatment for his 18 injuries, the blood that you saw around the nose and 19 mouth, you would have been able to determine whether 20 or not he was conscious or unconscious, correct? 21 MR. WEISENFELDER: Objection. 22 Go ahead. 23 A. Correct. 24 Q. Did you know whether or not Mr. Owensby</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Paragraph E. 3. on page 6. It says, "If 2 necessary, the Golf Manor Life Squad may be called 3 to provide an ambulance for transportation to a 4 medical facility." In this situation the Golf Manor 5 life squad was never called, correct? 6 MR. WEISENFELDER: Objection. 7 Go ahead. 8 A. Correct. 9 Q. At E. 5. it says, "Unconscious prisoners 10 shall not be transported in a police vehicle, but 11 shall be taken to a hospital or medical facility by 12 ambulance." Do you see that? 13 A. Yes. 14 Q. Again, there was no attempt by you or 15 anyone on behalf of Golf Manor to determine whether 16 or not the person being placed in your vehicle was 17 conscious or unconscious, correct? 18 MR. WEISENFELDER: Objection. 19 Go ahead. 20 A. Correct. 21 Q. In fact, based on what you observed, your 22 observations were consistent with someone who was 23 unconscious, correct? 24 MR. WEISENFELDER: Objection.</p>

Page 86 - Page 89

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 90</p> <p>1 Go ahead.</p> <p>2 A. I didn't know if he was conscious or</p> <p>3 unconscious.</p> <p>4 Q. Well, you heard no sounds from the</p> <p>5 individual at any time, correct, from Mr. Owensby?</p> <p>6 A. Correct.</p> <p>7 Q. You saw no movement from him at any time,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. As of November 7, 2000, had you had any</p> <p>11 training from Golf Manor as to whether or not you</p> <p>12 should make a determination of whether a prisoner is</p> <p>13 conscious or unconscious before that prisoner is</p> <p>14 placed in your vehicle when you are in a situation</p> <p>15 of assisting another police department?</p> <p>16 A. No.</p> <p>17 Q. Had you received any training on that</p> <p>18 subject?</p> <p>19 A. No.</p> <p>20 Q. As you sit here today, have you received</p> <p>21 any training on that subject?</p> <p>22 MR. WEISENFELDER: Objection.</p> <p>23 Go ahead.</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 92</p> <p>1 assistance, but when you arrived the officers were</p> <p>2 disheveled and were breathing heavily, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Again, in contrast to that you saw Mr.</p> <p>5 Owensby was not breathing heavily, correct?</p> <p>6 A. I don't recall.</p> <p>7 Q. You did not notice that he was breathing</p> <p>8 heavily?</p> <p>9 A. I did not notice, correct.</p> <p>10 (Plaintiff's Exhibit 78 was marked for identi-</p> <p>11 fication.)</p> <p>12 Q. Let me show you Exhibit 78, a document</p> <p>13 that we received yesterday. This is the mutual aid</p> <p>14 agreement between Golf Manor and other police</p> <p>15 departments in the greater Cincinnati area and</p> <p>16 Cincinnati Police Department?</p> <p>17 A. Correct.</p> <p>18 Q. Have you in the course of performing your</p> <p>19 duties at Golf Manor had the opportunity to review</p> <p>20 this mutual aid agreement?</p> <p>21 A. I have.</p> <p>22 Q. Have you had any training at Golf Manor</p> <p>23 concerning how to operate under the mutual aid</p> <p>24 agreement?</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Based on your understanding of the rules</p> <p>2 and regulations, policies of Golf Manor, if Officer</p> <p>3 Campbell had made an arrest and the subject was</p> <p>4 unconscious, would you believe that it would be okay</p> <p>5 for Officer Campbell to place the subject in your</p> <p>6 car, even though he was unconscious?</p> <p>7 MR. WEISENFELDER: Objection.</p> <p>8 Go ahead.</p> <p>9 A. No.</p> <p>10 Q. Am I correct in understanding that if the</p> <p>11 subject is unconscious the policy is that he should</p> <p>12 not be placed in any car and that an ambulance</p> <p>13 should be called?</p> <p>14 MR. WEISENFELDER: Objection.</p> <p>15 Go ahead.</p> <p>16 A. Correct.</p> <p>17 Q. In addition to observing that Mr. Owensby</p> <p>18 made no sounds and made no motion that evening, you</p> <p>19 understood when you arrived on the scene that there</p> <p>20 had been some sort of struggle in the arrest,</p> <p>21 correct?</p> <p>22 A. It appeared that there had been a</p> <p>23 struggle, yes.</p> <p>24 Q. You base that not only on the call for</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. WEISENFELDER: Objection as to what</p> <p>2 he's already testified concerning his</p> <p>3 understanding from other officers about the</p> <p>4 agreement.</p> <p>5 Q. I'm asking about formal training from Golf</p> <p>6 Manor.</p> <p>7 A. What do you mean by formal training?</p> <p>8 Q. A class.</p> <p>9 A. No.</p> <p>10 Q. Have there been any directives or memos</p> <p>11 given to you concerning how a Golf Manor officer is</p> <p>12 to carry out the mutual aid agreement?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Have any superiors at Golf Manor explained</p> <p>15 to you how an officer should behave in carrying out</p> <p>16 the mutual aid agreement?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Other than reading the mutual aid</p> <p>19 agreement, which you said you did, have you received</p> <p>20 any guidance from Golf Manor on how the terms of the</p> <p>21 agreement should be carried out, what your</p> <p>22 obligations are, what your duties are?</p> <p>23 A. From working on the road with an FTO and</p> <p>24 responding to other agencies, it's my understanding</p>

Page 90 - Page 93

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

<p style="text-align: right;">Page 94</p> <p>1 that you're under the authority of the jurisdiction 2 where you're at. Other than that, that's about as 3 far as the explanations went. I mean, you go there 4 to assist, help out with what they need you to help 5 out with, and then you go. 6 Q. When you say an FTO, that's a field 7 training officer? 8 A. Correct. 9 Q. Is that someone who is like a mentor to 10 you? 11 A. Yes. 12 Q. Look at page 7 of Exhibit 78, 13 paragraph VI. C. It says, "Whenever the law 14 enforcement" employee of one cooperating Agency" -- 15 "employees of one cooperating Agency are providing 16 police services in or to another cooperating agency 17 pursuant to the authority contained in this 18 contract, other legislative authority or state law, 19 such employees will have the same power, duties, 20 rights and immunities as if taking action within the 21 territory of their employing Agency." What did you 22 understand your duties to be under this 23 circumstance? 24 A. To respond and to assist the Cincinnati</p>	<p style="text-align: right;">Page 96</p> <p>1 up and Officer Campbell says, "Can I place Owensby 2 in the back seat of your cruiser?" and you say, 3 "Sure," are you responsible for Owensby's 4 well-being? 5 MR. WEISENFELDER: Objection. 6 Go ahead. 7 A. No. 8 Q. Am I correct in understanding the reason 9 you say no is because you did not arrest Mr. 10 Owensby? 11 A. At that point he would not be my prisoner. 12 Q. Why? 13 A. Because I did not arrest him. 14 Mr. Campbell placed him under arrest. 15 Q. Look at page 8, paragraph G. I'm looking 16 at the second sentence. "Each Agency shall be 17 responsible for the negligence of its employees to 18 the extent specified by law." Do you have any 19 understanding of what that means? 20 MR. WEISENFELDER: Objection. 21 Go ahead. 22 If you do -- 23 A. I don't. 24 Q. Did you receive any training or guidance</p>
<p style="text-align: right;">Page 95</p> <p>1 Police Department however they needed. 2 Q. You see that it says the same duties as if 3 taking action within the territory of Golf Manor. 4 A. Yes. 5 Q. If you were responding in the territory of 6 Golf Manor to the arrest of Mr. Owensby would you 7 have been responsible for his well-being? 8 A. If he was my prisoner -- 9 MR. WEISENFELDER: Objection. 10 Go ahead. 11 A. If he was my prisoner, yes. 12 Q. If he was not your prisoner, but you were 13 located in Golf Manor and he was placed in your car, 14 would you have been responsible for his well-being? 15 MR. WEISENFELDER: Objection. 16 Go ahead. 17 A. No. 18 Q. Why not? 19 A. Because he wasn't my prisoner. Unless the 20 arresting officer specifically asked me, "Can you 21 keep an eye on my prisoner for me? I've got to go 22 here." 23 Q. Say this takes place in Golf Manor and the 24 arresting officer is Officer Campbell, and you show</p>	<p style="text-align: right;">Page 97</p> <p>1 as to how that provision could impact on you and the 2 performance of your duties for Golf Manor? 3 A. Provision G? 4 Q. G. The sentence I just read to you, "Each 5 Agency shall be responsible for the negligence of 6 its employees to the extent specified by law." 7 A. To that specific -- no. 8 Q. Have you received any training from Golf 9 Manor as to any responsibilities of its officers 10 created by a violation of a citizen's constitutional 11 rights where Golf Manor is a cooperating agency? 12 A. No. 13 Q. Is it your understanding that this 14 Exhibit 78 was in effect on November 7, 2000? 15 A. Yes. 16 Q. That was part of the reason why you 17 responded on November 7, 2000? 18 A. That's correct. 19 Q. I want to ask about a couple of 20 apprehension techniques. 21 A. Okay. 22 Q. Did you ever hear of a head wrap 23 technique? 24 A. I've never heard of a head wrap.</p>

Owensby, et al. vs. City of Cincinnati
December 3, 2003

ROBERT B. HEILAND, JR.

Page 110	Page 112
<p>1 A. I heard something on the radio, yes.</p> <p>2 Q. Which you identified as somebody saying,</p> <p>3 "shoot him"?</p> <p>4 A. Something's going on, some type of</p> <p>5 trouble.</p> <p>6 Q. Let me refer you if I may to Exhibit</p> <p>7 Number 72. If you go to page 2, about halfway down.</p> <p>8 Do you see the question: "Do you remember exactly</p> <p>9 what you heard?</p> <p>10 "Answer: I can't make out exactly what I</p> <p>11 heard. I thought I heard somebody say shoot him."</p> <p>12 A. Yes.</p> <p>13 Q. Now, this statement was given the early</p> <p>14 morning hours of November 8th, 2000?</p> <p>15 A. Correct.</p> <p>16 Q. Right, basically, after the incident</p> <p>17 occurred?</p> <p>18 A. I believe the time is after midnight when</p> <p>19 they took the statement.</p> <p>20 Q. 0020 hours, if you look on the first page?</p> <p>21 A. Correct.</p> <p>22 Q. So that's 20 minutes after midnight?</p> <p>23 A. Correct.</p> <p>24 Q. That you gave your statement?</p>	<p>1 came out?</p> <p>2 A. That was before the actual assistance run.</p> <p>3 Q. So did you respond to the statement that</p> <p>4 you thought you heard about somebody saying, "shoot</p> <p>5 him"? Did you respond to that or did you respond to</p> <p>6 the assistance run that came out later?</p> <p>7 A. We responded when the officer needs</p> <p>8 assistance run came out.</p> <p>9 Q. You didn't respond when you heard them</p> <p>10 say, "shoot him"?</p> <p>11 MR. MARTINS: Objection. Asked and</p> <p>12 answered.</p> <p>13 A. No.</p> <p>14 Q. I'm sorry?</p> <p>15 MR. WEISENFELDER: He said no.</p> <p>16 Q. Go down if you will to the bottom of page</p> <p>17 2 of that same statement that you gave on</p> <p>18 November 8, 2000. And your answer was, "Knowing</p> <p>19 what I know now, that wasn't anything that I heard,"</p> <p>20 meaning "shoot him," right?</p> <p>21 A. Correct.</p> <p>22 Q. "But I, I that's why I tapped him. And I</p> <p>23 started heading to the, an address came out. He</p> <p>24 said it was down at Sam's, right around the corner,</p>
Page 111	Page 113
<p>1 A. Yes.</p> <p>2 Q. Would you feel that your recollection of</p> <p>3 the events was clearer on that day than it is today?</p> <p>4 A. Possibly. I mean, a lot of things were</p> <p>5 clearer that night, yeah.</p> <p>6 Q. The event had just occurred?</p> <p>7 A. It just occurred.</p> <p>8 Q. Maybe a few hours before?</p> <p>9 A. Right.</p> <p>10 Q. You hadn't talked to anybody about the</p> <p>11 incident, had you, from the time that it occurred</p> <p>12 until you were interviewed?</p> <p>13 A. No.</p> <p>14 Q. So you were giving to the investigators</p> <p>15 who were taking the statement your best recollection</p> <p>16 about what had just occurred?</p> <p>17 A. Correct.</p> <p>18 Q. Do you recall telling them that you</p> <p>19 thought you heard somebody say, "shoot him"?</p> <p>20 A. Yes, I do recall.</p> <p>21 Q. That's why you tapped him on the shoulder?</p> <p>22 A. That's why I tapped my partner on the</p> <p>23 shoulder.</p> <p>24 Q. That was before the actual assistance run</p>	<p>1 on Seymour. So I ran to my cruiser. Uhm, jumped</p> <p>2 in. Lights and sirens. Started heading down. The,</p> <p>3 the assistance call came out at that time, as I was</p> <p>4 proceeding down Wiehe towards Langdon Farm." Is</p> <p>5 that correct?</p> <p>6 A. That's what it says in this statement,</p> <p>7 correct.</p> <p>8 Q. Do you have any reason to doubt the</p> <p>9 accuracy of this statement?</p> <p>10 A. No reason to doubt it, no.</p> <p>11 Q. You reviewed this statement prior to the</p> <p>12 deposition today?</p> <p>13 A. Correct. Yes.</p> <p>14 Q. After reading that, does that refresh your</p> <p>15 recollection as to whether or not you responded to</p> <p>16 the words "shoot him" or you responded to the</p> <p>17 assistance call?</p> <p>18 A. We responded to the assistance call.</p> <p>19 Q. But you were already on your way, weren't</p> <p>20 you, when the assistance call came out?</p> <p>21 A. If you read the statement, that's the way</p> <p>22 it does sound.</p> <p>23 Q. Right.</p> <p>24 A. But we did not go to the scene, because</p>

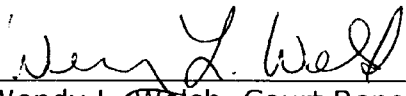
Page 110 - Page 113

AFFIDAVIT

- - -

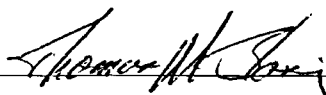
STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of ROBERT B. HEILAND, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.



Wendy L. Welsh, Court Reporter

Sworn to before me this 27th day of January, 2004.



Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.

<p style="text-align: right;">Page 118</p> <p>1 ten feet from the front of the door?</p> <p>2 A. Yes.</p> <p>3 Q. You indicated an officer asked you whether</p> <p>4 or not he could put the prisoner that they had in</p> <p>5 your car; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. You said, "Sure"?</p> <p>8 A. "Sure."</p> <p>9 Q. But you don't recall which officer that</p> <p>10 was?</p> <p>11 A. I do not.</p> <p>12 Q. How did they get the door opened?</p> <p>13 A. I opened the door.</p> <p>14 Q. How did you do that?</p> <p>15 A. I walked around to the front -- I was at</p> <p>16 the front and I walked back and opened the door. I</p> <p>17 think I had to unlock it, unlock the door. I opened</p> <p>18 the door.</p> <p>19 Q. Do you recall whether the windows were</p> <p>20 open or shut at the time?</p> <p>21 A. I don't recall.</p> <p>22 Q. It could have been open?</p> <p>23 MR. WEISENFELDER: Objection.</p> <p>24 MR. MARTINS: Objection.</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you notice any signs from any of those</p> <p>3 three people to indicate to you that chemical</p> <p>4 irritant had been applied?</p> <p>5 A. No.</p> <p>6 Q. What are the reactions you normally</p> <p>7 observe from people who are sprayed with chemical</p> <p>8 irritant?</p> <p>9 A. Their eyes will water, their nose will</p> <p>10 water, maybe cough.</p> <p>11 Q. You didn't observe that from Mr. Owensby,</p> <p>12 Officer Caton, or Officer Jorg, any of those things?</p> <p>13 A. Not that I recall.</p> <p>14 Q. After you opened the door to your cruiser</p> <p>15 and the officers were putting him into your cruiser,</p> <p>16 did you notice any signs of a struggle?</p> <p>17 MR. MARTINS: Objection. Asked and</p> <p>18 answered.</p> <p>19 MR. WEISENFELDER: Go ahead.</p> <p>20 A. It appeared that they were struggling with</p> <p>21 him, I believe is what my statement is.</p> <p>22 Q. Look at the bottom if you will of page 5.</p> <p>23 There's a lot of "okays" here which are not really</p> <p>24 questions. Let's go about halfway up.</p>
<p style="text-align: right;">Page 119</p> <p>1 You can go ahead.</p> <p>2 Q. They could have been opened or they could</p> <p>3 have been closed, you just don't remember?</p> <p>4 A. I just don't remember.</p> <p>5 Q. I think you indicated that you did not</p> <p>6 observe any odor of chemical irritant?</p> <p>7 A. Correct, I did not.</p> <p>8 Q. How close would you say you were to the</p> <p>9 two officers who took Mr. Owensby to your car and</p> <p>10 Mr. Owensby? What's the shortest distance you were</p> <p>11 away from them?</p> <p>12 A. The shortest distance? Maybe three feet.</p> <p>13 Q. If chemical irritant is used, based upon</p> <p>14 your experience, can you detect it from a distance</p> <p>15 of three feet from a person who's received chemical</p> <p>16 irritant?</p> <p>17 MR. MARTINS: Objection.</p> <p>18 MR. WEISENFELDER: Objection as to form.</p> <p>19 Go ahead.</p> <p>20 A. Based on my experience, I would say it</p> <p>21 would depend on if it was windy or what, you know,</p> <p>22 what type of surroundings you're at.</p> <p>23 Q. Did Officer Jorg or Officer Caton or Mr.</p> <p>24 Owensby appear to be reacting to chemical irritant?</p>	<p style="text-align: right;">Page 121</p> <p>1 "Question: Were there two uniformed</p> <p>2 officers taking him to the car?"</p> <p>3 Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And you say, "Two uniformed officers."</p> <p>6 A. Yes.</p> <p>7 Q. "Okay. Okay, go ahead.</p> <p>8 "So I stepped back after I open the door.</p> <p>9 They put him in the cruiser. And this time cars</p> <p>10 were showing up. Cars had, actually cars had</p> <p>11 started showing up about the time they started</p> <p>12 walking him over to the cruiser.</p> <p>13 "Okay.</p> <p>14 "Answer: I can't recall how many cruisers</p> <p>15 showed up. They were just you know coming from</p> <p>16 everywhere. Uh, somebody had went around to the</p> <p>17 driver's side rear door.</p> <p>18 "Okay.</p> <p>19 "Answer: And opened that door. Cause</p> <p>20 they were having trouble getting him in. He was</p> <p>21 still struggling with him."</p> <p>22 Who was struggling?</p> <p>23 A. The two officers that walked him over to</p> <p>24 the cruiser.</p>

Page 134

1 way that what you communicate with would go to your
2 fellow Golf Manor officers?

3 A. Everybody that's on the east can hear what
4 every other officer is saying.

5 Q. That would include anyone in the Golf
6 Manor police station?

7 A. If they had a radio on.

8 Q. Right. Now, on that night of November 7,
9 2000, was there some radio receiver or device at the
10 station so that a supervisor like Lieutenant Cravens
11 could hear what was being communicated over that
12 east frequency?

13 A. There was only two officers on duty that
14 night, Officer Campbell and myself.

15 Q. How did you communicate to officer
16 Cravens, Lieutenant Cravens, to come -- how did he
17 know to come to the scene?

18 A. Officer Campbell called him on a cell
19 phone.

20 Q. On a cell phone?

21 A. I did not communicate to him.

22 Q. So am I correct in understanding that the
23 only two police department personnel monitoring
24 communications on the night of November 7, 2000 were

Page 135

1 you and Officer Campbell?

2 A. We were the only two on duty. I don't
3 know if anybody else was listening to the radio or
4 not.

5 Q. There were no supervisors on duty Golf
6 Manor supervisors?

7 A. Not to my recollection. It was just us
8 two.

9 Q. Did you ever communicate over your mike
10 that Mr. Owensby was being placed in your cruiser,
11 in a Golf Manor cruiser?

12 A. I don't recall.

13 Q. Do you recall hearing whether anyone said
14 that Mr. Owensby was being placed in a Golf Manor
15 cruiser?

16 A. I don't recall.

17 Q. Mr. Hardin asked you about whether or not
18 when Mr. Owensby was placed in the car whether or
19 not the window was up or down. Do you recall that
20 question?

21 A. Yes.

22 Q. As I recall your testimony, at some point
23 that evening Sergeant Watts asked you to put the
24 window down for the back seat, correct?

Page 136

1 A. Correct, he did ask.

2 Q. You have a recollection of going over to
3 the front driver's door and rolling the window down
4 for the rear seat?

5 A. Correct.

6 Q. Do you have any recollection, before that
7 time, of rolling the windows down?

8 A. No.

9 Q. Do you have any recollection of putting
10 the windows up?

11 A. No.

12 Q. Am I correct then in understanding that on
13 that evening, from the time you arrived at the
14 Sunoco station to the time you rolled the windows
15 down, to your recollection, no one operated the
16 windows on your cruiser?

17 A. To my recollection, that's correct.

18 Q. Concerning Mr. Hardin talked to you about
19 your November 8 statement, was talking to you about
20 the struggle and your words concerning the struggle,
21 am I correct in understanding that the struggle that
22 you have described in that statement and in the
23 other statements that I've given you, you do not
24 know if the struggle was the result of the two

Page 137

1 police officers moving an unconscious person or
2 whether or not that person was offering any kind of
3 resistance; is that correct?

4 MR. HARDIN: Objection.

5 MR. WEISENFELDER: You can answer.

6 A. I do not know.

7 Q. It is just as consistent that the struggle
8 that you've described would be a result of moving
9 somebody who is unconscious; is that correct?

10 MR. HARDIN: Objection.

11 MR. WEISENFELDER: Objection.

12 Go ahead.

13 A. It's possible.

14 Q. At the time Mr. Owensby was placed in your
15 cruiser you do not know or you did not know whether
16 or not he was conscious or unconscious, correct?

17 A. I did not know.

18 Q. You were also asked some questions by Mr.
19 Hardin concerning the location of your car and the
20 front door. I've gone back and tried to find some
21 photographs that may assist. I'll mark these as
22 Exhibit 79 and 80.

(Plaintiff's Exhibits
79 & 80 were marked for

identification.)

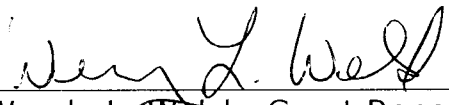
Page 134 - Page 137

AFFIDAVIT

- - -

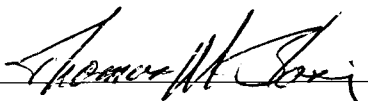
STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Wendy L. Welsh, Notary Public in and for the State of Ohio, do hereby state that the transcript of the deposition of ROBERT B. HEILAND, JR., deponent herein, having been submitted to said deponent for review and signature, has not been signed within the thirty (30) day period allowed under the Federal Rules; said deposition to now have the same force and effect as though signed.



Wendy L. Welsh, Court Reporter

Sworn to before me this 27th day of January, 2004.



Thomas M. Blasing
Notary Public - State of Ohio

My commission expires:
May 4, 2004.